

STATE OF NEW YORK

DIVISION OF TAX APPEALS

In the Matter of the Petition	:	
of	:	
RONALD AND ANGELA SCOTT	:	DETERMINATION
	:	DTA NO. 818855
for Redetermination of a Deficiency or for Refund of	:	
New York State Personal Income Tax under Article 22 of	:	
the Tax Law for the Year 1997.	:	

Petitioners, Ronald and Angela Scott, 1140 Edgewood Avenue, Rochester, New York 14618-5333, filed a petition for redetermination of a deficiency or for refund of New York State personal income tax under Article 22 of the Tax Law for the year 1997.

A small claims hearing was held before Frank W. Barrie, Presiding Officer, at the offices of the Division of Tax Appeals, 340 East Main Street, Rochester, New York, on April 27, 2004 at 9:15 A.M., which date began the three-month period for the issuance of this determination since neither party elected to reserve time to file a post-hearing brief. Petitioner Ronald Scott appeared *pro se* and on behalf of his wife, petitioner Angela Scott. The Division of Taxation appeared by Mark F. Volk, Esq. (Mac Wyszomirski).

ISSUE

Whether the Division of Taxation properly determined that petitioners' New York adjusted gross income should be increased to conform with their Federal adjusted gross income thereby resulting in additional New York State income tax due.

FINDINGS OF FACT

1. On their joint 1997 New York resident income tax return (form IT-201), petitioners reported Federal adjusted gross income of \$15,113.91 computed as follows:

Wages, salaries, tips, etc.	\$71,576.30
Taxable interest income	148.06
Dividend income	.76
Business income from Federal Schedule C	350.00
Capital gain or loss from Federal Schedule D	(46,000.00)
Taxable amount of pensions and annuities	2,757.36
Rental real estate	(13,718.57)
Reported Federal adjusted gross income	\$15,113.91

2. In contrast, on their joint 1997 Federal income tax return (form 1040), petitioners reported federal adjusted gross income of \$61,113.00. On their Federal return, petitioners did not claim a capital loss of \$46,000.00 as they did on their State return as noted in Finding of Fact “1”.

3. The Division of Taxation (“Division”) issued a Statement of Proposed Audit Changes dated November 27, 2000 asserting tax due of \$2,493.00 plus interest and a penalty of 10% of the understated tax. The following explanation was provided:

New York State has an exchange of information agreement with the Internal Revenue Service. The Internal Revenue Service provided us with information reported on your 1997 federal income tax return.

We compared the income reported on your 1997 federal and New York State returns. The income reported on the federal return was greater than on your New York State return.

* * *

We have increased your New York income to the amount reported on the federal return.

4. The Division then issued a Notice of Deficiency dated January 22, 2001 against petitioners asserting New York personal income tax due for 1997 of \$2,493.00 plus interest and penalty. This notice referenced the earlier statement detailed in Finding of Fact “3”.

5. In the course of the hearing, petitioner Ronald Scott realized that he could not report a capital loss on his State return which was not included in his Federal return. He indicated that he would be amending his Federal return. Nonetheless, the petition was not withdrawn by the Scotts thereby requiring the issuance of this brief determination.

CONCLUSIONS OF LAW

A. Pursuant to Tax Law § 612(a), the New York adjusted gross income of resident individuals means their “federal adjusted gross income as defined in the laws of the United States for the taxable year . . . [with certain modifications not relevant here].” Consequently, as noted in Finding of Fact “3”, the Division correctly disallowed the capital loss deduction of \$46,000.00 taken by petitioners on their New York return for 1997 since no such loss was taken by them in computing their adjusted gross income on their Federal form 1040.

B. The petition of Ronald and Angela Scott is denied, and the Notice of Deficiency dated January 22, 2001 is sustained.

DATED: Troy, New York
June 10, 2004

/s/ Frank W. Barrie
PRESIDING OFFICER